

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rose Lantigua (S14)	Team: Squad #14	CCRB Case #: 201603884	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/03/2016 7:30 PM	Location of Incident: 42nd Precinct stationhouse	Precinct: 42	18 Mo. SOL 11/3/2017	EO SOL 11/3/2017	
Date/Time CV Reported Thu, 05/05/2016 3:00 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/05/2016 3:00 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Chris Aybar	15039	955736	042 PCT
2. POM Martin Phillips	09298	939223	042 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Ricardo Wyman	3217	926322	042 PCT
2. POF Merita Hoxha	11713	955988	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Chris Aybar	Abuse: Police Officer Chris Aybar threatened to arrest § 87(2)(b)	
B.POM Martin Phillips	Abuse: Police Officer Martin Phillips threatened to arrest § 87(2)(b)	
C.POF Chris Aybar	Abuse: Police Officer Chris Aybar seized § 87(2)(b) s property.	

Case Summary

On May 5, 2016, § 87(2)(b) filed the following complaint by phone with the CCRB.

On May 3, 2016, at approximately 7:00 p.m., § 87(2)(b) arrived at § 87(2)(b) in the Bronx where her § 87(2)(b)-old son, § 87(2)(b) was arrested and handcuffed in the back of a marked RMP. § 87(2)(b) learned that § 87(2)(b) had been accused of trying to drive away in his grandmother's vehicle after he was told to exit the vehicle by officers. Sergeant Ricardo Wyman, Police Officer Chris Aybar, and Police Officer Merita Hoxha of the 42nd Precinct were also present. § 87(2)(b) spoke to Sgt. Wyman and explained that the vehicle belonged to her mother. Sgt. Wyman released the vehicle to § 87(2)(b) and told her that she could pick up § 87(2)(b) at the 42nd Precinct stationhouse where he would be issued a summons for § 87(2)(b).

§ 87(2)(b) drove to the 42nd Precinct stationhouse in the vehicle. PO Aybar asked § 87(2)(b) if she was driving the vehicle involved in her son's arrest. § 87(2)(b) repeatedly asked why and was informed by PO Aybar that the vehicle was going to be vouchered. § 87(2)(b) explained that Sgt. Wyman had released the vehicle to her. PO Aybar and PO Hoxha asked § 87(2)(b) to walk outside with them and Police Officer Martin Phillips of the 42nd Precinct. PO Aybar allegedly warned § 87(2)(b) that she would be arrested if she did not provide the keys to the vehicle (**Allegation A**). PO Phillips allegedly took out his gloves and handcuffs and held § 87(2)(b)'s right wrist with his left hand and told her, "Either you give me the keys right now or we arrest you for obstructing governmental administration." (**Allegation B**) § 87(2)(b) gave the keys to the vehicle to the officers during which time PO Phillips let go of her hand. The officers allegedly seized § 87(2)(b)'s mother's vehicle (**Allegation C**). PO Aybar did not allow § 87(2)(b) to take her phone from the vehicle. PO Aybar and PO Hoxha drove away in § 87(2)(b)'s mother's vehicle.

No video was obtained related to this incident.

Mediation, Civil and Criminal Histories

- Mediation was offered to § 87(2)(b) but she rejected it because § 87(2)(b)
- On May 17, 2016, § 87(2)(b) filed a notice of claim with the New York City comptroller's office. (BR01)
- § 87(2)(b), § 87(2)(c)
- § 87(2)(b), § 87(2)(c)

Civilian and Officer CCRB Histories

- § 87(2)(b) has filed one previous complaint that was closed as complainant uncooperative. (BR03)
- PO Aybar has been a member of the NYPD for two years and has five other CCRB allegations in three other cases. In case 201507102, an allegation of a retaliatory

summons was substantiated, the CCRB recommended command discipline and the NYPD did not issue command discipline. § 87(2)(g)

- PO Phillips has been a member of the NYPD for eleven years and has two other CCRB allegations that were closed as unfounded and unsubstantiated. § 87(2)(g)
- PO Hoxha has been a member of the NYPD for two years and has three other CCRB allegations that were closed as complainant uncooperative. § 87(2)(g)

Potential Issues

- § 87(2)(b) did not provide contact information for § 87(2)(b) and instructed the undersigned investigator to contact her in order to schedule him.
- The undersigned investigator was unable to obtain statements from witnesses in regards to the incident. § 87(2)(b) provided information for one witness, § 87(2)(b). The undersigned investigator was unable to get in contact with § 87(2)(b)
- § 87(2)(b) agreed to provide video footage to the investigator but said that she was having issues with the device where the video was stored. § 87(2)(b) agreed to bring the device to the CCRB but ultimately she did not send the footage to the undersigned investigator or appear at the CCRB with the device.

Findings and Recommendations

Allegations not pleaded

- **Abuse of Authority-Question:** Although § 87(2)(b) stated that § 87(2)(b) was questioned initial account of the complaint a question allegation is not pleaded against PO Aybar and PO Hoxha because § 87(2)(b) did not provide a verified statement and § 87(2)(b) was not present for that part of the incident.

Allegation A –Abuse of Authority: Police Officer Chris Aybar threatened to arrest § 87(2)(b)

Allegation B –Abuse of Authority: Police Officer Martin Phillips threatened to arrest

§ 87(2)(b)

§ 87(2)(b) recounted that PO Aybar and PO Hoxha asked her to walk outside with them and PO Phillips. Once they were outside, PO Aybar allegedly warned § 87(2)(b) that she would be arrested if she did not provide the keys. § 87(2)(b) recounted that PO Phillips allegedly grabbed her right hand and repeated the threat of arrest. PO Phillips took out his gloves and handcuffs and held § 87(2)(b)'s right wrist with his left hand during which time he said, "Either you give me the keys right now or we arrest you for obstructing governmental administration."

PO Aybar stated that PO Hoxha told § 87(2)(b) that the officers were taking the vehicle because they needed to verify true ownership of the vehicle. § 87(2)(b) repeatedly told the officers that the vehicle belonged to her mother and eventually refused to speak to PO Aybar and PO Hoxha. PO Aybar denied that she told § 87(2)(b) that she was going to arrest § 87(2)(b) if § 87(2)(b) did not give her keys to the vehicle or release the vehicle to her. She stated that PO Phillips told § 87(2)(b)

§ 87(2)(b) that if she did not give the keys to the officers, it would be considered OGA. PO Aybar did not recall whether any of the other officers threatened to arrest § 87(2)(b). PO Phillips stated that he told § 87(2)(b) to give the officers the keys to the vehicle because it was being vouchered. § 87(2)(b) told PO Phillips that she did not want to do that. PO Phillips told § 87(2)(b) that if she did not give the officers the keys to the vehicle she was committing OGA and she would be arrested.

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force, or interference, or by any means of any independently unlawful act, or by means of interfering, whether or not physical force is involved. (NY PL 195.05) (BR04)

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Allegation C –Abuse of Authority: Police Officer Chris Aybar seized § 87(2)(b) s property.

§ 87(2)(b) recounted that at the scene of her son’s arrest, she approached Sgt. Wyman and explained that the vehicle belonged to her mother, provided paperwork to prove it, and called her mother who spoke with Sgt. Wyman on the phone. Sgt. Wyman returned the paperwork to § 87(2)(b) and released the vehicle to her. He also informed her that § 87(2)(b) would receive a summons for disorderly conduct and instructed her to pick him up at the precinct.

§ 87(2)(b) drove to the 42nd Precinct stationhouse in the vehicle. She was approached by PO Aybar at the stationhouse who immediately asked her about the vehicle. PO Aybar told § 87(2)(b) that § 87(2)(b) was going to be arrested and informed her that the vehicle was going to be vouchered. § 87(2)(b) explained that Sgt. Wyman had released the vehicle to her, but was told by another sergeant that the vehicle needed to be kept in custody because Sgt. Wyman was not present at the stationhouse. § 87(2)(b) eventually released the vehicle to the officers.

It is undisputed that the keys to the vehicle were then seized and the vehicle was vouchered.

During her interview, PO Aybar recounted that she and PO Hoxha had observed the unattended vehicle running while it was parked at a hydrant. PO Aybar and PO Hoxha approached a group of men on the corner and asked them if the vehicle belonged to them. § 87(2)(b) approached the vehicle and informed the officers that the vehicle was his. PO Aybar also recounted that § 87(2)(b) did not provide license and registration when she and PO Hoxha requested that information. PO Aybar stated that Sgt. Wyman allowed § 87(2)(b) to leave with the vehicle.

When she and PO Hoxha arrived at the stationhouse, they were instructed by a sergeant to seize the vehicle because the owner of the vehicle was still in question. PO Aybar did not recall which sergeant instructed her and PO Hoxha to seize the vehicle.

According to the Patrol Guide Procedure 209-27, to reduce incidents of auto theft, when officers encounter a key in the ignition of an unattended vehicle, procedure is to remove the ignition key and either return the key to the violator or deliver the key to the desk officer to be invoiced. (BR05)

According to Patrol Guide Procedure 218-19, vehicles are invoiced into police custody if the true owner cannot be determined. (BR06)

§ 87(2)(g) [Redacted]

§ 87(2)(g) [Redacted]

§ 87(2)(g) [Redacted]

§ 87(2)(g) [Redacted]

Squad: 14

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date